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May 16, 2000

Surface Transportation Board
Office of the Secretary
Case Control Unit, ATTN: STB Ex Parte No. 582 (Sub-No. 1)
1925 K Street, NW
Washington, DC 20423-0001

ENTERED
Office of the Secretary

MAY 16 2000

Part of
Public Record

Dear Secretary Williams:

RE:

STB Ex Parte No. 582 (Sub-No. 1)

Major Rail Consolidation Procedures

Comments of the

Greater Houston Partnership

on

Advance Notice of Proposed Rulemaking

An original and 25 paper copies of the comments of the Greater Houston Partnership in the above-captioned proceeding are enclosed. Also enclosed is a 3.5-inch IBM-compatible floppy diskette containing an electronic copy of the enclosed comments, in or convertible by and into WordPerfect 7.0 format.

Respectfully submitted,

Jim C. Kollaer
Greater Houston Partnership

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STB Ex Parte No. 582 (Sub-No. 1)

Major Rail Consolidation Procedures

Comments of the

Greater Houston Partnership

on

Advance Notice of Proposed Rulemaking

The Greater Houston Partnership is Houston's principal business organization and is dedicated to building prosperity in the Houston region. The Partnership has 2,400 members from virtually every industry sector throughout the eight-county Houston region. The Partnership's Board of Directors is composed of 120 corporate CEO's of organizations in the Houston region, and Partnership members employ almost 600,000 people, which is one out of every three employees in the region.

The U.S. railroad industry in 2000 is far different than it was in 1980 when the Staggers Act was signed and when the current merger rules were promulgated by the Interstate Commerce Commission. The railroad industry of 1980 was characterized by substantial excess capacity, poor physical plant, an excess of routings and gateways resulting in inefficient utilization of resources, poor earnings, and regionalized railroads. Something clearly needed to be done to restore long-term railroad industry viability. The merger policies of 1980, reflected in the merger regulations being considered for revision in this proceeding, facilitated the combination of railroads and the elimination of redundancies and inefficiencies in the railroad network.

Conditions routinely imposed in earlier merger approvals, particularly those requiring interchange gateways to be maintained, were eliminated. The railroad industry consolidated and eliminated redundancies and inefficiencies. Financial viability was restored to the industry.

However, this remarkable improvement in the financial health and outlook for the railroad industry has not come without a price. The price of saving the railroad industry has been a tremendous reduction in railroad competition resulting in the virtual elimination of competitive choice for many shippers, including large shippers with multiple locations around the country. This did not have to be the case. Railroad merger policies contributed to the capacity constraints we face today because those policies were implemented with a lack of attention to maintaining and promoting competition.

The industry has consolidated to the point where only four major U.S. and two major Canadian railroads remain. Rail customers have had to make tremendous investments in rolling stock and facilities in order to be able to effectively utilize the railroad network. Although virtually all measures of railroad productivity acknowledge to the railroads have benefited from the Staggers Act; however, these measures have meant very little to customers who are captive to a single railroad and can depend neither on competition nor the Surface Transportation Board (STB) to assure them reasonable rates and acceptable service levels. The railroads have benefited: fewer more efficient through routes have replaced the innumerable through routes required by open gateway requirements, longer single-line hauls have improved transit times and the service abilities of the industry, and extensive use of unit trains and intermodal services have improved railroad efficiency; but the railroad's customers have suffered greatly because of the government's efforts to protect the railroads from competition.

The rail regulatory policies and merger regulations that protect railroads from rail competition and prevent shippers from using competition to assure reasonable service and fair rates need to be changed. The STB has opened discussion on competition and competitive access in its Advance Notice of Proposed Rulemaking. The Greater Houston Partnership believes it is most appropriate at this time to strongly recommend change in the regulatory scheme with regard to railroad competition and, by extension, railroad rates and service.

The Greater Houston Partnership is concerned that the intense concentration of the railroad industry, when combined with regulatory policies that support excessively high rates for shippers and plants captive to a single railroad, works to the long-term detriment of cities like Houston which depend on industrial activity for economic vitality. Many of the industrial plants in the Houston area, including those in the petrochemical industry, are served by only one railroad. Continuation of the prevailing railroad regulatory philosophy cannot help Houston, but can threaten its future growth by making Houston a less-attractive location for petrochemical production and risking future plant expansions being located off-shore.

Railroad Competition and Service Quality are Essential

The Greater Houston Partnership believes that the STB should include in its revised merger regulations provisions that (1) require the creation of competition where there is none and (2) guarantee dependable service levels with sanctions for significant service failures.

Competition

Throughout the history of the U.S. economy, competition among providers of goods or services has proven to be most effective way of assuring that products and services are made available in the marketplace at a reasonable price for customers while providing reasonable profits for efficient producers. In the railroad industry, competition would cause railroads to strive to satisfy their customers by providing consistent, reliable service while continuously improving efficiency and reducing costs. Origin or destination competition and competitive routings are key elements of railroad competition.

Origin or Destination Competition

In situations where a plant or facility is served by only one railroad, which is a common situation in the Houston region, the shipper or receiver at that facility does not enjoy any of the benefits of rail competition. The shipper or receiver is at the mercy of the serving railroad, particularly if the commodity being shipped is not easily diverted to truck shipment. The Partnership has members who find themselves in that situation, where they are captive to a single railroad in the Houston area and ship commodities that are not easily shifted to other transport modes. National studies have shown that shippers who are captive pay an average of 30 percent more for rail transportation than do shippers with competitive rail choices.

Competitive Routings

The Partnership is concerned that shippers, even those with competitive rail choices at their Houston facilities, may lose those competitive choices as the result of the merger of one of their competitive serving railroads with the railroad serving the destinations for their shipments. For example, a shipper served by both Railroads A and B at origin and whose destination is served by Railroad C would lose its ability to choose Railroad B as its origin carrier if Railroad A merges with Railroad C. Having competitive choices serves these shippers well in terms of rates, car supply, train schedules, and customer service. Even though their origin location would continue to be served by two railroads (a two-to-two point) and the criteria applied in past mergers would indicate no reduction in competition, in reality, these shippers would lose the option of shipping over Railroad B because the merged Railroad A-C would not make competitive rates available from the interchange point to the destination; the reverse would apply for products moving to Houston. Past rail mergers extended rail bottlenecks. The risk that the final rail mergers may even further extend existing bottlenecks, and further diminish the competitive choices available to Houston-area shippers, makes the preservation and, where necessary, the creation of competition an important imperative for the STB in crafting the standards by which future railroad mergers will be judged and conditioned.

In addition, Houston shippers face a unique restriction on the competitive options that can be provided by a particular railroad serving Houston. Because of previous merger decisions, The Texas Mexican Railroad is restricted to handling only that Houston traffic that has a prior or subsequent movement on the Tex-Mex's line between Corpus Christi and Laredo, i.e., Tex-Mex can handle only southbound traffic from Houston and northbound traffic to Houston, eliminating Tex-Mex as a competitive choice for Houston customers who ship to destinations anywhere west, north, or east of Houston.

Recommendations

The Partnership recommends that the STB revise its merger regulations to require merging railroads to permit competitive access to all shippers located in major terminal areas by all railroads in the terminal area and to all shippers located within a pre-determined distance from a railroad interchange point. Further, the STB is encouraged to require merging railroads, to maintain existing gateways and existing joint line rate levels at those gateways, subject to an annual indexing administered by the STB.

To prevent the unintended consequence of requiring one railroad to open its captive customers to competition without requiring its competitors to do the same, the STB is encouraged to use its oversight authority to keep the merger proceeding open until the other railroads in the terminal area have a merger application before the STB and impose the condition on all of the railroads simultaneously.

Service Quality

Service in the Houston region suffered greatly from the mergers created several years ago. The Partnership took an active role in the STB proceedings and with the railroads in trying to improve the service to shippers in the Houston region. The Partnership is concerned that there is currently no penalty for bad service. Shippers who are trapped captive to one railroad have no effective recourse if that railroad's service deteriorates, even if it deteriorates to a point where it inflicts severe economic hardship and harm on the customer.

The Partnership believes that competitive access, as described above, is the solution for this problem. If the customer has competitive choices, the likelihood of a severe service failure will be vastly reduced because the serving railroad would risk losing the business and, more importantly, the customer could take advantage of its competitive alternative routing for its shipments on a non-congested competitor.

Lacking such competitive access, the Partnership believes the STB should create a sanction for any railroad whose service failures cause financial harm to customers above a pre-determined threshold. The Partnership believes the STB should consider in such a case requiring the non-performing railroad to immediately open that particular customer to competitive access. With that action captive shippers could enjoy responsive service that comes when competition is present.

The elimination of surplus capacity by the railroads has left the industry woefully unprepared for volume increases or for service interruptions. Sanctions described above would create an incentive for the railroads to invest adequately in infrastructure, an incentive that is presently absent in the railroads' captive shipper world.

Recommendations

If the STB does not provide shippers access to more than one railroad, the STB should institute severe sanctions on railroads whose service failures cause substantial financial harm to their customers, such that harmed customers are granted immediate access to another railroad.

Port Issues are a Special Concern

The STB asked for comments specifically addressing the issue of ports and how foreign ownership of railroad might affect ports. The Partnership is concerned about the port issue regardless of the nationality of the ownership of railroad companies. The Port of Houston provides a nucleus for much of the industrial activity in the Houston region. The citizens of Houston and Harris County have made substantial investments in port facilities, as have numerous industries located along the Houston Ship Channel, to support the economic activity and job growth in the region.

The Partnership believes that market forces should drive shippers' choices as to which ports they choose to use for their import and export movements. These market-based decisions should not be affected by artificial preferences granted by railroad companies to specific ports. The public interest is easily identified in this case. It is reflected in the public investments made in port infrastructure and services by the citizens of the port city. The public interest demands that shippers' choices of which ports to use must not be made subject to the decisions of a railroad's ownership or management.

Recommendation

The STB should require, in its revised merger regulations, that all merging railroads maintain strict neutrality between ports. This neutrality would require that railroads not give routing, service, rate, or promotional preferences to one port over another. The STB needs to establish an effective, neutral forum to adjudicate disputes between ports and railroads over this issue. This is an issue where the public interest demands a level playing field and even-handed treatment by the STB.

Conclusions

The Greater Houston Partnership believes the STB's merger regulations should affirmatively promote the preservation of railroad competition where it exists and the creation of railroad competition where it does not exist. Further, merger regulations should affirmatively require railroads maintain complete neutrality between ports, in its service, rates, and promotions.

CERTIFICATE OF SERVICE

I do hereby certify that copies of these Comments of the Greater Houston Partnership have been served on all parties of record in STB Ex Parte No. 582 (Sub-No. 1) by first-class U.S. mail.

David C. Finklea

May 15, 2000